



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-831]

Fresh Garlic from the People's Republic of China: Notice of Court Decision Not in Harmony with Final Results of Administrative Review and Notice of Amended Final Results

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On September 19, 2017, the United States Court of International Trade (the CIT) entered final judgment sustaining the Department of Commerce's (the Department) second remand results pertaining to 18th administrative review of the antidumping duty order on fresh garlic from the People's Republic of China (PRC) for Hebei Golden Trading Co., Ltd. (Golden Bird) and Shenzhen Xinboda Industrial Co., Ltd. (Xinboda). The Department is notifying the public that the final judgment in this case is not in harmony with the final results and partial rescission of the 18th antidumping duty administrative review and that the Department has amended the dumping margins found for Xinboda and Golden Bird.

DATES: Applicable September 29, 2017.

FOR FURTHER INFORMATION CONTACT: Chien-Min Yang, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-5484.

SUPPLEMENTARY INFORMATION:

Background

On June 30, 2014, the Department published the *Final Results* pertaining to mandatory respondents Golden Bird and Xinboda, along with other exporters.¹ In the *Final Results*, the Department selected the Philippines as the primary surrogate country and relied on total adverse facts available (AFA) with respect to Golden Bird and found that the company was part of the PRC-wide entity.² The Department calculated a rate of \$1.82 per kilogram for Xinboda.

On November 30, 2015, the CIT remanded for the Department to: (1) consider evidence on the record concerning Golden Bird's independence from government control to determine whether the company is entitled to separate rate status based solely on that evidence, and if so, to determine an appropriate dumping margin specific to Golden Bird, taking into consideration the Department's sustained determination to select total AFA and applying the law extant at the time of the *Final Results*; (2) reconsider its surrogate country selection in the light of the Court's ruling concerning its interpretation of "significant producer."³

On February 29, 2016, the Department filed the *Final Remand Results*.⁴ In accordance with the *Final Remand Results*, the Department found, under protest, that Golden Bird is not part of the PRC wide entity and assigned a new separate AFA rate of \$2.24 per kilogram, which represented Xinboda's highest transaction-specific margin from the instant administrative review.⁵ The Department continued to find that the Philippines was a significant producer,

¹ See *Fresh Garlic from the People's Republic of China: Final Results and Partial Rescission of the 18th Antidumping Duty Administrative Review; 2011-2012*, 79 FR 36721 (June 30, 2014) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM).

² See IDM.

³ See *Fresh Garlic Producers Association v. United States*, 121 F. Supp. 3d 1313 (CIT 2015).

⁴ See Memorandum to The File, "Final Results of Redetermination Pursuant to Remand: Fresh Garlic from the People's Republic of China," (February 29, 2016) (*Final Remand Results*).

⁵ *Id.* at 6.

taking into account the “comparative” analysis required by the Court and the specific facts of this case.⁶

On July 7, 2016, the CIT again remanded the Department’s selection of the Philippines as a surrogate country.⁷ Per the Court’s instructions, the Department reconsidered its surrogate country selection and, under protest, selected Ukraine as the primary surrogate country.⁸ The calculations performed with the new surrogate values resulted in a weighted-average dumping margin of \$2.19 per kilogram for Xinboda. Since the Department recalculated a margin for Xinboda with a new surrogate country and new surrogate values, we updated Golden Bird’s separate AFA rate to reflect Xinboda’s highest-transaction specific margin using the new surrogate values. Accordingly, Golden Bird was assigned an updated AFA rate of \$2.76 per kilogram.

On September 19, 2017, the CIT sustained the Department’s *Second Remand Results* with respect to the eighteenth administrative review of the AD order on fresh garlic from China.⁹

Timken Notice

In its decision in *Timken*,¹⁰ as clarified by *Diamond Sawblades*,¹¹ the Court of Appeals for the Federal Circuit held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), the Department must publish a notice of a court decision that is not “in harmony” with a Department determination and must suspend liquidation of entries pending a “conclusive” court decision. The CIT’s September 19, 2017, final judgment sustaining the

⁶ *Id.* at 6-11.

⁷ See *Fresh Garlic Producers Association v. United States*, 180 F. Supp. 3d 1233 (CIT 2016).

⁸ See Memorandum to The File, “Final Results of Redetermination Pursuant to Remand: Fresh Garlic from the People’s Republic of China, Fresh Garlic Producers Association, et al., v. United States, U.S. Court of International Trade, Consol. Ct. No. 14-00180, Slip Op. 16-68,” (January 10, 2017) (*Second Remand Results*).

⁹ See *Fresh Garlic Producers Association v. United States*, CIT Slip Op. 17-127, Consol. Ct. No. 14-00180 (September 19, 2017) (Slip Op. 17-127).

¹⁰ See *Timken Co. v. United States*, 893 F.2d 337, 341 (Fed. Cir. 1990) (*Timken*).

¹¹ See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

Second Remand Results constitutes a final decision of the Court that is not in harmony with the Department's *Final Results*.¹² This notice is published in fulfillment of the *Timken* publication requirements.

Amended Final Results

Because there is now a final court decision, we are amending the *Final Results* with respect to the dumping margins calculated for Xinboda and Golden Bird. Based on the *Second Remand Results*, as affirmed by the CIT, the revised dumping margin for Xinboda, from November 1, 2011, through October 31, 2012, is \$2.19 per kilogram. The separate AFA rate for Golden Bird from November 1, 2011, through October 31, 2012, is \$2.76 per kilogram.

Because the CIT's ruling was not appealed, it represents a final and conclusive court decision, and accordingly the Department will instruct Customs and Border Protection (CBP) to assess antidumping duties on unliquidated entries of subject merchandise based on the revised dumping margins summarized above.

Cash Deposit Requirements

The Department will not update the cash deposit requirements for Golden Bird and Xinboda as they each have later-determined rates from subsequent administrative reviews.

¹² See *Final Results*.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

Dated: December 4, 2017.

Gary Taverman,
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2017-26384 Filed: 12/6/2017 8:45 am; Publication Date: 12/7/2017]